



***New York State Board for Professional Medical Conduct***

*433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863*

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
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NYS Department of Health*

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NYS Department of Health*

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*Vice Chair*

Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

January 3, 2002

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Raphael G. Cunanan, M.D.  
130 Fernwood Avenue  
Grand Island, New York 14072

RE: License No. 111229

Dear Dr. Cunanan:

Enclosed please find Order #BPMC 02-2 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect January 3, 2002.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Daniel T. Roach, Esq.  
1620 Liberty Building  
Buffalo, New York 14202

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER**  
**OF**  
**RAFAEL G. CUNANAN, JR, M.D.**

**CONSENT**  
**AGREEMENT**  
**AND**  
**ORDER**

BPMC No. 02-2

Rafael G. Cunanan, M.D., (Respondent) says:

That on or about January 25, 1972, I was licensed to practice as a physician in the State of New York, having been issued License No. 111229, by the New York State Education Department.

My current address is 130 Fernwood Avenue, Grand Island, New York 14072, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with eleven specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to the Third through Sixth Specifications, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My license to practice medicine in the State of New York shall be permanently limited, pursuant to § 230-a of the Public Health Law, to preclude the practice of medicine. I shall be precluded from patient contact, diagnosing, treating prescribing or operating for any human condition. I shall be precluded from teaching medicine or consulting on medical issues. I agree to comply with the terms of practice limitation attached hereto as Exhibit B.

I further agree that the Consent Order for which I hereby apply shall impose a condition that Respondent shall change his registration status to "inactive" with the New York State Education Department Division of Professional Licensing Services and provide proof of such change to the Director of the Office of Professional Medical Conduct within thirty days of the effective date of this Order. Failure to comply with such condition shall constitute misconduct as defined by New York State Education Law § 6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

In addition, I am unable to practice medicine due to a serious medical condition. This statement in no way diminishes the admissions made herein.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

DATED 12/20/2001

*Rafael G. Cunanan, Jr. M.D.*  
RAPAEL G. CUNANAN, JR., M.D.  
RESPONDENT

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.


DATE: 20 Dec 2001

  
DANIEL ROACH, ESQ.  
Attorney for Respondent

DATE: 24 Dec 01

  
JOSEPH H. CAHILL, ESQ.  
Associate Counsel  
Bureau of Professional  
Medical Conduct

DATE: 26 December 2001

  
DENNIS J. GRAZIANO  
Director  
Office of Professional  
Medical Conduct

IN THE MATTER

OF

RAFAEL G. CUNANAN, JR., M.D.

CONSENT  
ORDER

Upon the proposed agreement of Rafael G. Cunanan, Jr., M.D.  
(Respondent) for Consent Order, which application is made a part hereof, it is  
agreed to and

ORDERED, that the application and the provisions thereof are hereby  
adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board,  
which may be accomplished by mailing, by first class mail, a copy of the Consent  
Order to Respondent at the address set forth in this agreement or to Respondent's  
attorney by certified mail, or upon transmission via facsimile to Respondent or  
Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 1-3-2002



WILLIAM P. DILLON, M.D.  
Chair  
State Board for Professional  
Medical Conduct

1. Respondent shall immediately cease and desist from engaging in the practice of medicine in accordance with the terms of the Order. In addition, Respondent shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Respondent shall within fifteen (15) days of the Order notify his patients of the cessation of his medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority whichever time period is longer. Records shall be maintained in a safe and secure place which is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient or and/or his or her representative requests a copy of the patient's medical record or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of their inability to pay.
4. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall within fifteen (15) days advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance privileges to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 to the DEA.
5. Respondent shall within fifteen (15) days return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall cause all prescription pads bearing his name to be destroyed. If no other licensee is providing services at his practice location, all medications shall be properly disposed.
6. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings by which his eligibility to practice is represented.
7. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered by himself or others while barred from engaging in the practice of medicine. Respondent may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.
8. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and if his license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order,

Respondent shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.

9. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in section 230 a1. of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which the Respondent is found guilty and may include revocation of a suspended license.



STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER  
OF  
RAFAEL G. CUNANAN, JR. M.D.**

STATEMENT  
OF  
CHARGES

Rafael G. Cunanan, M.D., Respondent, was authorized to practice medicine in New York State on January 25, 1972, by the issuance of license number 111229 by the New York State Education Department, with a registration address of 1311 East Park, Grand Island, New York, 14072.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A (patients are identified in the Appendix) during June of 1997 at Respondent's office at 620 Tenth Street, Niagara Falls, New York. Respondent's care and treatment of Patient A failed to meet accepted standards of medical care in that:
1. Respondent failed to adequately advise and instruct Patient A of the risks to her of a potentially serious medical condition, including ectopic pregnancy and/or a completed spontaneous abortion, and/or failed to document such advice and instruction.

2. Respondent failed to give Patient A appropriate follow-up instructions and/or failed to document such instructions.
3. Respondent failed to maintain records that accurately reflected Patient A's condition and treatment.

B. Respondent provides medical care to Patient B during January and February of 1992 at his office and also at Niagara Falls Memorial Medical Center. Respondent's care and treatment of Patient B failed to meet accepted standards of medical care in that:

1. Respondent failed to document in his pre-operative notes the proposed laser surgery on Patient B's hand.
2. Respondent failed to obtain a consent from Patient B prior to the laser surgery on Patient B's hand.
3. Respondent performed laser surgery on Patient B's hand despite lacking surgical privileges to perform the procedure at the Niagara Falls Memorial Medical Center.

C. Respondent provided medical care to Patient C on or about April, May and June 1993 at his office and at Niagara Falls Memorial Medical Center. Respondent's care and treatment of Patient C failed to meet accepted standards of medical care, in that:

1. Respondent failed to take timely and/or adequate steps to address Patient C's worsening post-operative condition on May 1, 1993, and/or document such steps.
- D. Respondent provided medical care to Patient D for a number of years, including the period of October 1996 through, at least, January 1997. Respondent's care and treatment of Patient D failed to meet accepted standards of medical care, in that:
1. Respondent failed to take adequate steps to diagnose Patient D's condition on visits including October 22, 1996, November 8, 1996 and December 3, 1996, including the failure to perform a urine pregnancy test.
- E. Respondent provided medical care and treatment to Patient E during 1995 at his office and at Niagara Falls Memorial Medical Center. Respondent's care and treatment of Patient E failed to meet accepted standards of medical care, in that:

1. Respondent did not obtain a consent before performing an oophorectomy on Patient E on August 7, 1995.
  2. Respondent did not document the medical necessity for an oophorectomy in his operative notes related to the surgery performed on August 7, 1995.
  3. Respondent failed to note in his operative dictation for the surgery on August 7, 1995 that he performed a hysteroscopic procedure and Dilatation and Curettage on Patient E.
- F. Respondent provided medical care to Patient F from 1996 through 1998 at his office and Niagara Falls Memorial Medical Center. Respondent's care and treatment failed to meet accepted standards of medical care, in that:
1. Respondent failed to adequately evaluate Patient F with regard to possible endometrial pathology prior to the hysteroscopy and endomyometrial resection performed on June 8, 1998 at Niagara Falls Memorial Medical Center.

G. Respondent provided medical care to Patient G during March of 1997 at his office and also at Niagara Falls Memorial Medical Center. Respondent's care and treatment of Patient G failed to meet accepted standards of medical care, in that:

1. Respondent failed on March 26, 1997 at 0310 hours to timely response to an emergent situation related to Patient G's persistent and severe variable decelerations in labor, a non-reassuring fetal heart rate, and the presence of meconium fluid.

H. Respondent provided medical care to Patient H from 1995 through, at least, November of 1997. Respondent's care and treatment of Patient H failed to meet accepted standards of medical care, in that:

1. Respondent prior to November 28, 1997 failed to adequately inform Patient H of the permanent changes that an endomyometrial resection would cause to her reproductive ability, and/or failed to adequately document such information in Patient H's record.

2. Respondent on November 28, 1997 performed an endomyometrial resection on Patient H when such procedure was not the appropriate treatment for Respondent's diagnosis of adenomyosis.
3. Respondent failed to perform an adequate histologic evaluation of the endometrium before performing the endomyometrial resection on November 28, 1997.

**SPECIFICATIONS**

**FIRST SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with negligence on more than one occasion in violation of N.Y. Education Law § 6530(3), in that Petitioner charges two or more of the following:

1. The facts in Paragraphs A and A.1, A and A.2, A and B and B.2, B and B.3, C and C.1, D and D.1, E and E.1, F and F.1, G and G.1, H and H.1 and H.2, H and H.3.

**SECOND SPECIFICATION**

**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with incompetence on more than one occasion in violation of N.Y. Education Law § 6530(5), in that Petitioner charges two or more of the following:

2. The facts in Paragraphs A and A.1, A and A.2, A and B and B.2, B and B.3, C and C.1, D and D.1, E and E.1, F and F.1, G and G.1, H and H.1 and H.2, H and H.3.

**THIRD THROUGH SIXTH SPECIFICATIONS**

**RECORD KEEPING**

Respondent is charged with failing to maintain a record for each patient which accurately reflects to evaluation and treatment of the patient in violation of N.Y. Education Law § 6530(32), in that Petitioner charges:

3. The facts in Paragraphs A and A.3.
4. The facts in Paragraphs B and B.1.
5. The facts in Paragraphs E and E.2.
6. The facts in Paragraphs E and E.3.

DATED: *December 26*, 2001  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct